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Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972
NO. 72-1015

TRED-AIR OF CALIFORNIA, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REHEARING

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TO THE HONORABLE THE CHIEF JUSTICE, WARREN E. BURGER, AND TO THE HONORABLE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully petitions for rehearing on the ground that Tred-Air of California, Inc., a California corporation, has been and is being denied due process of law guaranteed by the Fifth Amendment to the Constitution of the United States.

By the decision of the Court below and that of the Hearing Examiner, the corporation is being charged with and assessed the wages of an employee without its day in Court because only an attorney at law can legally represent

a corporation and only after he is duly authorized by the corporation by its Board of Directors to represent it. A corporation cannot appear before a Court and should not be permitted to appear before a Labor Board in matters in which the corporation is involved or is being assessed a penalty without having counsel to represent it.

In Osborn, et al. v. The Bank of the United States, 6 L.ed. 226, the Court says:

> "It is admitted that a corporation can only appear by attorney, and it is also admitted that the attorney must receive the authority of the corporation to enable him to represent it.
>
> * * *
>
> "Natural persons may appear in court, either by themselves or by their attorney. But no man has a right to appear as the attorney of another, without the authority of that other."

See also: Mullin-Johnson Co. v. Penn Mutual Life Ins. Co., 9 F.Supp. 175; Brandstein v. White Lamps, Inc. 20 F.Supp. 369; Paradise v. Nowlin, 86 Cal.App.2d 898

By denying a hearing, the Court is denying petitioner due process of law and the equal protection of the laws for in all other cases, in state or federal Courts, an attorney is required to represent the corporation.

A corporation is an artificial person. (Dearborn v. Grand Lodge, 138 Cal. 658)

A corporation may invoke the equal protection clause of the Fourteenth Amendment against any proscribed action by a state. (Johnson v. Goodyear Mining Co., 127 Cal. 4)

Under federal law, as well as state law, only an attorney can appear for it and plead and manage its case. (Mullin-Johnson Co. v. Penn Mutual Life Ins. Co., 9 F.Supp. 175; Brandstein v. White Lamps, Inc., 20 F.Supp. 369)

It would be grossly unfair to let the judgment of the Court of Appeals stand and to leave the corporation itself unrepresented because an officer of the corporation claimed to be able to represent it and thus place the liability on the corporate members who did not have their day in Court and who deprived the stockholders of their day in Court.

We respectfully pray for rehearing and reversal of the Judgments below.

Respectfully submitted,

MORRIS LAVINE

Attorney for Petitioner

CERTIFICATE OF COUNSEL

Counsel certifies that the foregoing petition is filed in good faith and not for the purpose of delay and that it raises substantial questions of law which have been overlooked by the Court in its consideration of the case and which involves equal protection of the laws and due process of law to a corporation as well as an individual under the Fifth Amendment to the Constitution of the United States.

Morris Lavine

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

Ethel Vornholt, being first duly sworn, deposes and says: that I am and was at all times herein mentioned, a citizen of the United States and a resident of the County aforesaid, over the age of eighteen years and not a party to the within above entitled action; that my business address is 215 W. 7th St., Los Angeles, Calif. That on April 18, 1973 I served the within Petition for Rehearing on the Respondent in said action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, Calif. addressed as follows:

National Labor Relations Board, Local 21 (Branch Office), 849 S. Broadway, Los Angeles, Ca. 90014

Marcel-Mallet-Prevost, Esq., National Labor Relations Board, Washington, D.C.

William J. McCauley, Esq., for the General Counsel, National Labor Relations Board, Washington, D.C. 20570

Paul Crost, Esq., Brundage, Neyhart, Miller, Ross & Reich, 1625 W. Olympic Blvd., Suite 805, Los Angeles, Ca. 90015

Carl H. Ullman, 1616 West 9th Street, Los Angeles, Ca. 90015

Ethel Vornholt

Subscribed and sworn to before me this 18th day of April, 1973.

Jacquelyn Brucker

Notary Public in and for Said County and State

OFFICIAL SEAL
JACQUELYN BRUCKER
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires August 14, 1976
(SEAL)